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1 at conciliation are futile, basically,
2 stating that conciliation of this matter
3 will not work?

4 A I guess it could be inferred,
5 yeah.

6 Q Do you have a different --

7 A No.

8 Q Did you participate in the
9 investigation of Ms. Blackledge's EEOC
10 charge from 2004?

11 A Did I participate in it?

12 Q Yes.

13 A From the standpoint of what now?
14 What do you mean?

15 Q Did you do an investigation?

16 A No.

17 Q Interviews?

18 A No.

19 Q Anyone from your office do any
20 interviews, that you're aware of?

21 A No.

22 Q Did you have any discussions with
23 anyone about the EEOC charge, besides the --

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1 well, anyone, first of all?

2 A Just the legal division, people
3 in legal.

4 Q You didn't have any conversations
5 with Ms. Susan Stuardi about the charge?

6 A No.

7 Q How about Ms. Jerryln London?

8 A No.

9 Q How about Fordyce Mitchell?

10 A No.

11 Q Ms. McIntosh-Wilson, did you have
12 any conversations with her?

13 A No.

14 Q And Ms. Blackledge has filed a
15 second charge of discrimination. Are you
16 aware of that second charge of
17 discrimination?

18 A Yes.

19 Q And are you aware of that -- what
20 that charge alleges?

21 A I believe this is the one
22 regarding performance appraisal?

23 Q Performance appraisals, yes. And

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1 it is or where we would find it? We
2 provided some documents here, and I didn't
3 see one, but that does not mean there is not
4 one. I couldn't find one. Do you have
5 something here we could look through to find
6 it?

7 A Other than the DMHR policy
8 manual?

9 Q Yes.

10 A No.

11 Q I mean, do you want to look
12 through and see if we can find it?

13 A We can.

14 (Whereupon Plaintiff's
15 Exhibit Number 84 was marked and
16 attached to the deposition.)

17 BY MR. WILSON

18 Q Before we do that, this might
19 help. This is Plaintiff's Exhibit 84, two
20 pages of documents. And this is marked
21 number 60-77, policy statement: "A hostile
22 work environment or on-the-job harassment
23 will not be tolerated." I will show you

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1 this document.

2 A Okay. What about this?

3 Q Is that a policy that's in effect
4 today in the department?

5 A Yes.

6 Q Do you know if there's a separate
7 policy, other than that document, discussing
8 retaliation?

9 A No. I don't think there's
10 anything separate that I'm aware of.

11 Q So it's your belief that policy
12 60-77 encompasses the retaliation policy of
13 the department?

14 MR. TARVIN: Object to the form.

15 A This is the one that I'm familiar
16 with. I'm not familiar with another one.

17 Q Okay. I'm going to show you
18 again, there's nothing that I saw specific
19 that states retaliation is prohibited, is
20 that correct?

21 A Nothing specific that states
22 retaliation, no, I don't see that.

23 Q And as far as we know today,

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1 there's no other policy that would encompass
2 retaliation?

3 MR. TARVIN: Object to the form.

4 A Not one that I can find today,
5 but I will continue to look through this and
6 see if there's something I missed.

7 Q Okay. If you want to take your
8 time or any --

9 A I don't see anything else.

10 Q Okay. And whether or not we can
11 find it specifically written in the
12 policies, is it the policy of the department
13 that employees cannot be retaliated against
14 once they've taken some sort of protective
15 activity?

16 A Absolutely.

17 Q And that should -- employees or
18 anyone should not retaliate against another
19 employee, no matter how they feel about the
20 allegations an employee is making, is that
21 correct?

22 A That's correct.

23 Q If an employee alleges they're

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1 Q Okay. Ms. Kendra Butler, who has
2 been Ms. Blackledge's supervisor for some
3 time now, said she has not received any
4 training on any type of retaliation or
5 employment discrimination. Does that
6 surprise you?

7 MR. TARVIN: Object to the form.

8 A I don't know Ms. Butler. I don't
9 know, you know, what capacity she's been in,
10 other than supervising at Region III. But
11 the Brewer Center would have been
12 responsible for any training that was done
13 there at that time. So I can't speak for
14 that.

15 Q Well, I mean as Director of HR,
16 of Human Resources -- I mean as Director of
17 Human Resources, do you think it's important
18 that supervisors are trained on employment
19 discrimination matters?

20 A Absolutely.

21 Q If supervisors are the ones
22 giving out discipline, they should know
23 what's right and what's wrong regarding

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1 you seen that document before?

2 A Yes.

3 Q And is this a policy to comply
4 with equal opportunity employment matters?

5 A It's pretty much a policy
6 statement regarding equal employment
7 opportunity.

8 Q Section 2 there, Standards, would
9 you just read that for me, sentence.

10 A "The department will maintain and
11 implement some affirmative action plan."

12 Q Is there some affirmative action
13 plan?

14 A Yes.

15 Q How long has that been in effect?

16 A When I got here in 1980 it was in
17 effect. We've revised it since then, of
18 course.

19 Q Do you know why that affirmative
20 action plan was put in effect?

21 A To ensure that individuals would
22 be employed and -- on an equal opportunity
23 basis, based on Title VII.

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1 don't remember right now?

2 A Yeah, I just don't remember right
3 now.

4 Q Federal something or another?

5 A It's the same classification
6 that's done by the Federal Government when
7 they do GS ratings and that kind of thing.

8 Q Do you know if that scoring
9 system was followed in regards to
10 Ms. Blackledge's desk audit?

11 A I'm not real certain.

12 Q If it was not performed, would
13 that be a violation of the policy?

14 MR. TARVIN: Object to the form.

15 A If it was not performed?

16 Q If the scoring system was not
17 performed.

18 MR. TARVIN: Same objection.

19 A I wouldn't say it would be a
20 violation. It would be an oversight on
21 someone's part.

22 Q So it should be performed?

23 A Yes.

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1 Q And what is a form 40?

2 A That's a questionnaire that the
3 State of Alabama uses for each of its
4 positions, whether it's classified or merit
5 -- I mean whether it's classified or
6 unclassified. It details the job
7 descriptions.

8 Q Okay. If you will, can you flip
9 through those documents and tell me if
10 there's a form 40 in there?

11 A No, the form 40, itself, is not
12 in here.

13 Q The scoring that we discussed
14 about that's supposed to be done during a
15 desk audit, would that be done on a form 40
16 or something else?

17 A No, the form 40 would be
18 separate.

19 Q Do you see anything in these
20 documents that indicate the proper scoring
21 was done for Ms. Blackledge's desk audit?

22 MR. TARVIN: Object to the form.

23 A The nonfactors are here but the

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1 scoring is not actually done.

2 Q Okay. And we're talking about
3 this Exhibit 4 still, correct?

4 A Yes.

5 Q So there's nine factors and
6 there's no scoring done, is that correct?

7 A That's correct.

8 Q So would you state this is an
9 improper audit?

10 MR. TARVIN: Object to the form.

11 A Improper, I wouldn't say improper
12 but maybe incomplete.

13 Q Incomplete? The lack of scoring
14 would indicate a incomplete audit -- let me
15 finish. The lack of scoring would indicate
16 a incomplete audit, is that correct?

17 A As far as I'm concerned.

18 Q Okay. Do you remember seeing
19 this document?

20 A I don't remember.

21 Q Do you remember anything about
22 Ms. Blackledge bringing to anyone's
23 attention that the desk audit was not

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1 the bottom, she appears to be complaining
2 the interviewer, Ms. Benson, did not request
3 a narrative or did not ask detailed
4 questions, or do you remember that being an
5 issue?

6 A No. I don't remember that as
7 being an issue.

8 Q Do you remember her making a
9 complaint about the improper scoring?

10 A Yes.

11 Q And what's labeled here as
12 Exhibit 7, I believe goes from Bates stamp
13 3547 to 3554. Do you recognize that
14 document?

15 A Yeah, I recognize it.

16 Q And what do you recognize it as?

17 A Well, I saw it for the first time
18 when we were going over the interrogatories,
19 and I think this is part of the exhibits
20 that I saw.

21 Q Would you agree that it appears
22 to be Ms. Blackledge drafting what she
23 considers to be a proper desk audit?

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1 Q Well, first of all, let me ask
2 what does the recommendation mean?

3 A That means that she was -- the
4 hearing officer recommended that guidelines
5 be established for doing desk audits and
6 that another desk audit be done for the CSS
7 III or IV and that she may be given a desk
8 audit for a Mental Health Specialist II, if
9 the standards allow for Mental Health
10 Specialist II.

11 Q Do you know if standard
12 guidelines and procedures were completed
13 after this?

14 A Yes.

15 Q They were?

16 A Yes.

17 Q And did -- where are those
18 guidelines located? Where are they? What
19 are they located in?

20 A In fact, I don't believe we even
21 have them in our responses here, but I could
22 get that for you.

23 Q Okay.

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1 Q And did you do anything to
2 investigate those complaints?

3 A Well, first of all, she had
4 already made a call to Joan Owens to
5 determine whether she had to sign her
6 performance appraisal, and I think Joan
7 responded that she did and that there was no
8 appeal for filing an appeal on one's
9 performance appraisal. So, as a result, no,
10 I did not respond to that.

11 Q And have you done anything to
12 assure employees do not retaliate against
13 Ms. Blackledge?

14 A Have I done anything?

15 Q Yes.

16 MR. TARVIN: Same objection. You
17 can answer.

18 A The only thing, I've had a
19 conversation with Ms. Wilson to just make
20 sure that was understood at that regional
21 office, that that would not happen. So
22 that's the only thing I've had a
23 conversation with her about.

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1 Q Can you tell me those steps?

2 A Well, without looking, I will do
3 my best with what I remember. Verbal
4 warnings, written counseling, written
5 reprimand, suspensions, termination.

6 Q Okay. That's about right. Do
7 you know if verbal discipline should be
8 documented?

9 A A written warning is usually
10 documented but no points are deducted.

11 Q Okay. And I'm trying not to make
12 a lot more exhibits, but on Bates stamp
13 4641, page 38, says, "The supervisor should
14 make a note as documented evidence of the
15 conversation, including violation, the date
16 it occurred, the employee's name, what
17 action will follow, and employee's comments.
18 The note of the verbal reprimand should be
19 kept in supervisor's file, not in the
20 Personnel file." Is that the policy as you
21 know it today?

22 A Yes.

23 Q Are you familiar with

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1 preappraisals?

2 A Yes.

3 Q And mid-appraisals?

4 A Yes.

5 Q What are -- what is a
6 preappraisal?

7 A Well, the preappraisal,
8 basically, is that document that outlines
9 those duties that will be performed and
10 agreed upon by the employee and the
11 supervisor for a particular classification.

12 Q And when is that usually done?

13 A At the appraisal period,
14 beginning of the new appraisal period, or
15 when a person first comes into employment.

16 Q And what about a mid-appraisal?

17 A A mid-appraisal is usually done
18 at the three-month interval, if it's a
19 six-month evaluation period or six-month
20 probationary period, it's usually done at
21 the third month.

22 Q And supervisors having some
23 issues with the employee, is the supervisor

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1 supposed to develop some sort of plan for
2 that employee to improve over the course --
3 until the next appraisal?

4 A An action plan, yes.

5 Q Is that supposed to be
6 documented?

7 A It should be documented on that
8 form that an action plan has been developed.

9 Q Should be documented on the
10 mid-appraisal form?

11 A Right.

12 Q Okay. And the supervisor should
13 let the employee know what that plan is and
14 how they can improve?

15 A Yes, it should be written on that
16 form.

17 Q Okay. I don't think I've asked
18 you this, but do you play any role on
19 selecting who is on an interview panel when
20 a job comes open?

21 A Do I play a role, personally?

22 No.

23 Q Have you ever selected who would

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1 A Right.

2 Q And they're making the ultimate
3 decision, because they're signing off on it,
4 but they might not have any actual input
5 into the decision, is that true?

6 A As it relates to filling a
7 position?

8 Q Yes. As it relates to the person
9 selected for the position?

10 A Well, I'm quite sure the
11 supervisor will definitely be talking to the
12 Associate Commissioner, if that's the person
13 that supervises them, before a decision is
14 made.

15 Q Okay. So if Ms. Wilson had
16 testified that she did not play a role in
17 making a decision, she left it to the
18 authority of the supervisor, is there
19 anything wrong with that?

20 A Nothing wrong with that, if
21 that's what she wants to do. Yeah.

22 Q She has the ability to do that?

23 A Yes.

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1 employees?

2 A Yes.

3 Q And these are the following two
4 pages, page 8 and 9. I believe this goes
5 with it, correct?

6 A Yeah, that's correct.

7 Q And I'm just going to attach this
8 as one exhibit, Exhibit 94, pages 3 through
9 9, Bates stamped 4808 through 4814. When
10 employees are chosen, should the person
11 choosing just look to the interviews or they
12 should look at other stuff also, such as
13 employees' education and qualifications?

14 A Yeah, everything.

15 Q Everything together?

16 A Yes.

17 Q Do you know if any particular
18 weight is put on the interview compared to
19 other factors?

20 A Not necessarily, no. The
21 interview plays a major piece of it, but
22 there are other factors too to include.

23 Q Plays a part but they should also

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1 consider employees' education?

2 A Sure.

3 Q Their work experience?

4 A Directly related to the job
5 they're applying for, yeah.

6 Q Anything else you can think of?

7 A No.

8 Q And on page 9 here, paragraph 3,
9 stating, "It also must be stressed that
10 interviewer supervisor who is rating the
11 applicant must make no attempt the
12 manipulate the system or otherwise allow
13 personal biases to influence the decision."

14 A Yeah.

15 Q So it would be against policy for
16 the interviewer and selector to try to
17 influence other panel members?

18 A Yes.

19 Q Do you think it's possible that
20 that could happen sometimes?

21 MR. TARVIN: Object to the form,
22 I think.

23 A We know anything is possible, but

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1 I just hope it didn't happen and doesn't.

2 But it's possible, yeah.

3 Q And my understanding is that
4 through the interview, employees are given a
5 list of questions to ask the interviewees,
6 is that correct?

7 A Yes.

8 Q But, ultimately, it's up to the
9 interviewer's subjective opinion on the
10 employees who is the best candidate?

11 MR. TARVIN: Object to the form.

12 A You're going to have to repeat
13 that one again for me.

14 Q Will you read it again?
15 (Whereupon, the question was read back.)

16 MR. TARVIN: Same objection.

17 A The panel makes the
18 recommendation to whatever the acquiring
19 manager is, whether that manager is on the
20 panel or not. If it's a supervisor that
21 they need to make the recommendation to,
22 that you look at the top three in this
23 category or this is the number 1 person,

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1 that recommendation is made by the panel.

2 Q Okay. But when the panel is
3 interviewing an applicant, they have to go
4 by their subjective opinion on the applicant
5 in the interview, correct?

6 MR. TARVIN: Object to the form.

7 A Well, if you want to say it's
8 subjective, whatever is in front of them as
9 it relates to information provided, whether
10 it's educational background or whether it's
11 how they came across, how they answered the
12 questions in the interview, yes, if you want
13 to say that's subjective.

14 Q Right. How they answered the
15 questions and all, that would be subjective?

16 A Yeah, certainly.

17 Q But they should also take into
18 account maybe other objective things, maybe
19 such as -- that you can weigh, such as
20 education, experience, and work experience?

21 A Yes.

22 Q All right. I think I'm done.
23 Thank you for your time.